In the

UNITED STATES DISTRICT COURT

For The Southern District of Ohio
Western Division

Civil Case No. 1622

THE SUCHER PACKING CO.,
Plaintiff,

vs.

MANUFACTURERS CASUALTY INSURANCE CO.,
Defendant.

PROCEEDINGS

* * *

Mr. Goldman

(Tr. 5) For example, the main part of the claim involves fresh and smoked pork — beef and veal has been eliminated — and sausage is only a very small part of the claim.

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Opening Statement of Mr. Goldman

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(Tr. 12) The evidence will show that at the Sucher Packing Company, beginning November 1, 1947, — I am mistaken about the date. I said before that the policy on which this suit is based begins November 1, 1947. However, the evidence which we will present to you, the figures will begin not on November 1, 1947, but begin in November of 1948 and extend until September of 1950.

The evidence will also show that the reason that no figures are produced for the period November 1, 1947 to

(Tr. 13) November 1, 1948 is because the Sucher Packing Company's bookkeeping at that time was not such that we could prove positively the accuracy of the figures and we believe you will be persuaded in this case, and convinced that we have restricted ourselves in this case solely to that much of the theft, although we contend, as the evidence will show, that much more theft occurred. We are restricting ourselves in our claims here only to that portion of the theft which we can prove to your satisfaction and we believe positively and conclusively, and for that reason, although the policy began in November 1, 1947, we will not show you any figures because we don't think our figures are reliable until November 1948.

* * *

(Tr. 15) If any portion went to the so-called tankage or for lard, whatever purpose it was, it was weighed so they had the exact scale weight on the dressed hog and from that you should be able to compute how much is left. If you have the whole, the evidence will show, you will be convinced, what is left should be after you subtract the parts from the whole.

* * *

(Tr. 16) And in this case, the evidence will show that after subtracting all of the properly subtractable parts, that is, the portion went into smoked pork, smoked sausage, lard and tankage and the sales weight, and what was left — and proper percentage for evaporation, there still was a very large discrepancy, the only explanation for which was that someone got away with it dishonestly.

* * *

William Harris Cross-Examination

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(Tr. 38) Q. And you told the truth on the day you were caught, didn't you?

A. Nothing but the truth.

Q. Nothing but the truth?

A. That's right.

Q. And you talked to Mr. Merica on the day you were caught?

A. That's right.

• • •

(Tr. 39) Q. Do you recall Mr. Merica taking a statement from you?

A. Do I remember?

Q. Yes.

A. Yes, I remember.

Q. And you signed that, did you not?

A. That's right.

• • •

(Tr. 40) Q. Now, Mr. Merica was the person employed by Suchers to question you, wasn't he?

A. That's right.

Q. And you knew he was questioning you about alleged thefts of meat?

A. That's right.

• • •

(Tr. 42) Q. Do you recall this question: "Q. Will you state in your own words just how you came to strat taking hams from Sucher Packing Company?" Do you remember that question?

A. I remember that too.

Q. Was this your answer: "A. Well, one evening (Tr. 43) about three weeks ago Jimmy Jackson he came and stopped me and said: 'I got some hams for you to take

away from me. If you keep quiet, I'll give you $1.50 for each one of them and 75 cents for each bacon.' And so him and this Loy Maiden or Steiner they got together and he told me to take four hams, a slab of bacon and a round of beef to Gordon's home. Gordon is a bartender for Classic Gardens. I didn't get nothing out of it." Is that statement true?

A. That is when I started on the truck.

Q. Was that statement true?

A. That was true.

• • •

(Tr. 45) Q. You didn't tell Mr. Merica a thing about anyone else being involved, excepting in receiving hams and bacon, did you, in that statement?

A. I didn't tell him that.

• • •

Kenneth Smith Direct

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(Tr. 109) So other than our fiscal closing inventory, when we have the auditors come in, the inventories are to a large extent approximated.

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Kenneth Smith Cross-Examination

• • •

(Tr. 135) Q. You sold some hogs as carcasses?

A. In carcass form.

Q. Have you got any record on that?

A. Yes, there will be an inventory record.

Q. What do your records show that as? You don't show it as smoked pork?

A. No. That shows as fresh pork. We look at the whole department as fresh pork.

Q. That is, carcasses were sold as fresh pork?

A. Yes.

(Tr. 136) Q. That's right. Now, would you please, at your convenience today or tomorrow, see what you can find in the way of records of how much fresh pork you sold in carcass form?

A. Yes.

* * * *

(Tr. 137) Q. When you sold fresh pork by carcass, that weighed a good many pounds, didn't it?

A. Yes. Very often sell in carloads lots and very often as individual.

* * *

(Tr. 138) Q. Will you look at these weekly sheets and see if you can find where any carcass was sold?

A. No. On those sheets they show as fresh pork sales.

* * *

(Tr. 156) Q. I am talking about what we trimmed off now. That goes to lard, sausage and where else?

A. Well, the parts we trimmed off go to lard and sausage.

* * *

(Tr. 165) A. I don't think you heard me. That 17,000,000 pounds includes a great number of dressed hogs that were sold in the carcass form. Therefore, the fresh pork sold would not be 31 percent of that weight.

Q. And you have supporting data for that?

A. Yes. Before you asked if we would get a record of the dressed hogs, and I communicated with the office and they are trying to locate those records.

Q. For both periods, first and second?

A. Yes.

• • •

(Tr. 169) Q. All right. 38 percent goes into smoke. Now, 38 percent of this some 17,000,000 is quite a different figure from what is represented in your claim.

A. Here we get back again. I said included in that 17,000,000 were a number of carloads of dressed hogs that were shipped, which would not be further processed. Hogs which would not be cut up, so you can't take those percentages of that figure.

Q. And you are going to give us what that was?

A. That is correct.

• • •

(Tr. 175) Q. You stated that you had taken certain tests to try to calculate shrink; is that right?

A. That is correct.

Q. Keep any record of them?

A. No, we don't ordinarily.

Q. Did you keep any record?

(Tr. 176) A. No. I kept them for a time, then I threw them away.

Q. So you have no record at all that shows?

A. No.

• • •

(Tr. 178) Q. You do understand what is meant by "cooler shrinkage", don't you? There could be no doubt about that in the minds of the experts?

A. Yes, I understand what cooler shrinkage means.

• • •

Q. It is the shrinkage that takes place in the cooler?

A. Yes.

• • •

(Tr. 187) Q. I am talking about actual count.

A. The actual count will be on the fiscal inventory, the year end closing.

* * *

A. Our weekly inventory is approximate weights, with the exception of those at the fiscal closing, which are actual weights.

Q. That is once a year they are actually weighed?

(Tr. 188) A. Yes.

Q. Weekly they are approximated?

A. For the big part, yes.

* * *

(Tr. 194) Q. That is an approximate inventory. That is not an actual inventory by count, is it?

A. No. That is an approximate inventory in a large part.

Q. I beg your pardon.

A. It is an approximate inventory in large part.

* * *

Q. So that each one of these weekly sheets, yellow two-page, only one page to be considered, Plaintiff's Exhibit 4, all the inventory figures are approximate figures?

A. On the weekly sheets, with the exception of those sheets at the fiscal closing when all products are actually weighed.

* * *

(Tr. 195) Q. When do you take that inventory, October 31st?

A. Approximately.

Q. So the one for October 31st would be actual?

A. That is right.

* * *

(Tr. 197) Q. And that shortage is based upon an approximate inventory at the beginning of the week and an approximate inventory at the end of the week?

A. Yes.

Q. Now, who was it guessed that inventory at the beginning and the end of the week?

MR. GOLDMAN: Your Honor, the witness did not say they guessed it. He said it was approximated.

Q. Who was it named that figure, approximate beginning of the week and approximate at the end of the week?

A. We have several different foremen and clerks.

• • •

(Tr. 198) Q. Now, you probably know, Mr. Smith, that your claim begins on December 4, 1948. You know that?

A. Yes.

• • •

(Tr. 199) Q. All right. It begins the week ending December 4th. And the first period ends October 22, 1949. You know that?

A. October 22, 1949, yes, I guess so.

Q. So that in that period from December 4, 1948 to October 22, 1949, you never had an actual inventory by count, did you?

A. No. Those two periods not being fiscal closing would not be accurate, but you would only be concerned with two inventories there because the first inventory and the last, all the other intervening inventories cancel themselves out, and any percentage of error that might be in the first inventory or the last inventory would not amount to anything.

• • •

(Tr. 200) Q. All right. Now, the second period starts after your October inventory, that is, it starts November 5, 1949 and ends September 30, 1950. So in that period you had no actual inventory by count, did you?

A. The two inventories involved were approximate inventories.

• • •

(Tr. 219) Q. You were to bring us, I think, some records you have about some carcasses that were sold in the second period.

A. Yes. They are in the process of preparation now. I believe they should, perhaps, be completed around noontime, and they will be sent down here.

• • •

(Tr. 220) Q. In this complaint, the original complaint, the amended complaint and the second amended complaint, the Sucher Packing Company says that for three years they have certain losses, beginning in November, 1947 and three years after November, 1947 would be November, 1950. Do you have any records at all with you or anyplace else, that shows anything about any losses beginning November, 1947 up to these papers that you have prepared and brought in here, which begin in December of 1948, 13 months afterwards?

A. No. There are no records available for that period that would disclose the thefts. And the reason for that will be they were not started to be compiled until sometime thereafter. Weekly product analysis statement was not installed until a much later date.

Q. So, for the first 13 months of this period for which we are sued, you have no records to show to us, (Tr. 221) as you have for the last two years?

A. That's right.

Q. Is that right?

A. That's right.

* * *

(Tr. 222) Q. You don't know how much your losses amounted to in the first 12 or 13 months?

A. When you say "how much losses", yes, the monthly statement will show how much the losses amounted to, but where those losses occurred they do not show.

Q. So we begin with papers beginning about December 2, 1948 after a third of the period had passed?

A. Yes, sir.

* * *

(Tr. 227) MR. GOLDMAN: Your Honor, I think for the purpose of the record we ought to offer all these papers in so they can be more freely referred to.

MR. PICKREL: Now, if it please the Court, I don't want to seem to be too meticulous or cranky, but honestly to bring in a flock of papers like that and offer them in the record, how in the world are we going to keep track of them? We have Plaintiff's Exhibit something or other. It is a lot of white sheets. How many I don't know. I can guess. I can approximate, but I don't know. The record doesn't show. We have two folders of yellow sheets known as "Weekly Sheets", for I don't know how many weeks. We can guess how many. But our record, if they are going to introduce all these papers, (Tr. 228) then — in evidence, Plaintiff's Exhibit 3, they are just a folder with a lot of papers. If you are going to build a record in this case, we are worse off than Sucher Packing Company.

* * *

(Tr. 229) MR. PICKREL: I object to them being introduced in bulk that way. I would like to suggest this, too, about some papers that have already been introduced

There have been introduced here Exhibits 2 and 4 for respective weeks, not for the weeks covered in the petition, but for other weeks that they have selected, and each week contains two long sheets. One of them has to do with beef and veal which they say is out of the case. Well, if that is out of the case, then I think that sheet should be taken from that exhibit and leave simply the pork which is in the case.

(Tr. 256) Q. Now, I hand you weekly sheet for week ending June 11, 1949, and there we find a shrinkage of 16,551 pounds, and ask you, is that shrinkage for that week ending that date?

A. Yes, sir.

Q. And you can't explain how that shrinkage occurred?

A. I cannot explain how that shrinkage occurred.

Q. Do you know of anyone that week that stole 16,000 pounds of whatever that product was?

A. No.

Q. What was the product?

A. The product was fresh pork.

Q. Fresh pork again. Now, that 26,000 about which you testified a moment ago, and this 16,000 were both marked as shrinkage, weren't they?

(Tr. 257) A. Yes, sir.

Q. And they were both put in your auditor's report and charged to the defendant, weren't they?

A. Yes. But if there were inventory errors, we credited that; they forget to show something, it would offset itself and you would get some of that weight back in subsequent reports.

Q. That's all right, except for the two "ifs" you put in there; if there was an error and if they caught it.

A. That has been the case.

Q. Pardon me. I don't mean to argue with you.

A. Some weeks show a gain.

Q. Will you look at the week ending July 23, 1949, which we take from Plaintiff's Exhibit 2, and you find a shrinkage of fresh pork there of how much?

A. 25,692 pounds.

Q. And that is for that week, isn't it?

A. This is the week the records show that shrinkage, yes.

Q. And you don't know of anybody that stole it, do you?

A. No.

Q. You have no explanation now as to how it occurred, have you?

(Tr. 258) A. No. I can't say how it occurred. Possibly at the time—

* * *

(Tr. 259) Q. But this 25,692 pounds that is shown as shrinkage for that week, was picked up by your auditor and put in his report and charged against the defendant, wasn't it?

A. If you want to state it that way, the answer would have to be yes, qualified.

Q. All right, qualify.

A. There would also be weeks in which gains were shown and in which the defendant, as you call it, was credited.

Q. That's right. We will get to those in a minute. In other words, if you made a mistake which caused a shortage, you also made mistakes which caused overages, didn't you?

A. Yes.

* * *

(Tr. 262) Q. Now, of course, you say that those things all straighten themselves out?

A. I said if they were caused by errors they straighten themselves out. If the stuff is getting away, you never get it back.

Q. Now, you have just referred to October 1, 1948, week ending that date?

A. Yes.

Q. Which showed a shortage in fresh pork of 18,245 pounds?

A. Yes.

Q. Now, I show you the inventory for the week ending October 8th, the next week.

A. Yes.

(Tr. 263) Q. And look how it is all straightened out because it has a shortage of only 14,313 pounds of fresh pork the second week. Didn't straighten out, did it?

A. No. No doubt caused a lot of concern. That might be one of the times when we called a detective or something.

MR. PICKREL: No. You should have called a bookkeeper, not a detective. Now, as I understand, for the sake of the record, Mr. Goldman, your second period now ends – you have amended it and changed it and the changed end is what?

* * *

(Tr. 269) Q. You wouldn't sell lard as fresh pork, would you?

A. We treat it as one department, fresh pork department, just how that was broken up right now I can't answer, but I can answer with a certainty anything that was charged, the credit was given, if it was taken to another department, and the final difference of shrinkage is only what we are unable to account for.

Q. Do you know of anything else that might have been sold out of this 9,000,000?

A. Offhand, I don't.

Q. Let's look at the second period there. We find there is 17,000,000 pounds of fresh pork and we find (Tr. 270) likewise that out of that 17,000,000 pounds, you sold 10,000,000 pounds of fresh pork and you sold 2,700,000 pounds, we will call it, of smoked pork.

A. Yes.

Q. And you sold 2,100,000 pounds of sausage, which makes a grand total of sales of about 15,000,000 pounds. Now, do you know of anything else sold out of that 17,000,000 pounds of fresh pork in the second period other than those three items I have just read to you?

A. I have not examined the papers that go to make up this. I didn't make up the claim and what just every transaction is there. I don't think I can explain, but given time, I can find out the answer to all your questions.

Q. Just give me an answer to one question.

A. Not having prepared this, it is impossible for me to say with certainty what is included and what is not included.

Q. I will ask the question again. Do you know of anything else that was sold by the Sucher Packing Company during the period November 5, 1949 to September 30, 1950 — do you know of anything else that was sold by the Sucher Packing Company out of this 17,000,000 pounds of pork other than the three items that I have read to you?

A. Yes.

Q. What?

(Tr. 271) A. I know there was tankage sold. I know there was grease sold.

Q. How much, do you know?

A. Not without going through the records, no, I don't.

Q. You can find out for us?

A. Yes, yes.

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Kenneth Smith Redirect

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(Tr. 278) Q. Mr. Smith, I have in my hand a copy — another photostat of the same paper I believe Mr. Pickrel had, which he referred to as the auditor's statement, or compilation. I will ask you in connection with the carcass weight processed pounds figure shown of 9,758,144, in 47 weeks ending October 22, 1949, how was that number of pounds of fresh pork disposed of? Describe in your own words.

A. Well, they would be disposed of partially through the sale of dressed hogs part through the sale of fresh hams, loins and various fresh cuts obtained after the animal is slaughtered, and partly through the sale of lard and partly through the sale — transfers to other departments.

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Julian A. Hawk — Voir Dire

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(Tr. 291) Q. Do you know whether or not Mr. Hadler made an audit of the company's records and data to support the figures given to him by the company?

A. I know that he did not.

• • •

(Tr. 292) Q. Do you know whether Mr. Hadler secured the data that he obtained on his work sheets simply by copying from these sheets?

A. That is my understanding, the way it was done.

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Julian A. Hawk Cross-Examination

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(Tr. 306) Q. Now, I am asking you if there is fed into the week's inventory figures that are incorrect so that it throws an incorrect position at the end of the period, which incorrect position is picked up for the start of the next period, and then the next period again incorrect information is fed in which affects the inventory at the end of that period, the fact that incorrect information is fed into (Tr. 307) these inventories week by week, certainly has something to do with their true value as inventories; is that not so?

A. Well, certainly, the items which would come in have to be correct.

* * *

Kenneth E. Smith Re-Cross

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(Tr. 319) Q. Now, did you bring in the sheets, your work sheets, your weekly sheets for the last three weeks in September, 1950 that I requested the other day?

A. No, I didn't bring those in. I believe they are still looking for those. We have been digging records around so much that—

* * *

(Tr. 320) Q. Now, I am asking you if you know that according to Mr. Hadler's sheets and to his calculations that for the week ending September 16, 1950, you were short 11,096 pounds of fresh pork?

A. No, I don't know that. In fact, I have not looked at Mr. Hadler's work sheets.

* * *

(Tr. 323) Q. Now, look on those sheets and any more that you want to look on here — I don't mean to deprive you of the opportunity of searching more of them. I think these are probably indicative. Tell us whether or not there is in any place in those sheets that there is any figures at all about the amount of meat that went into the cafeteria out at the plant?

A. On these sheets there are no figures on the amount of meat that went into the cafeteria.

* * *

(Tr. 326) Q. So that this sheet that you have in front of you dated November 5, 1949—

A. Yes.

Q. (continued) — was the sheet made up immediately following your actual inventory by count?

A. Yes, that is correct. And inasmuch as there was no live hogs charged on the opening inventory here, would indicate that the error happening there — in other words, nothing was charged to that to begin with. Something perhaps occurred that week or something unaccounted for.

Q. So that 492 pounds over on the right hand side, for the November 5, 1949 statement, is that in error, do I understand you to say?

A. Yes, I would say there was an error.

Q. That was an error?

A. Yes.

Q. Well, take a little further look at that sheet and see if there are any more errors you can tell us (Tr. 327) about.

A. There would be none I would be able to tell you about that I see here.

Q. Well, you notice the next name there under "live hogs" is the word "offal".

A. Yes, sir.

Q. And then over to the right hand column you have "shrinkage or gain". The amount of offal in pounds is circled.

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. So there was a shortage in this offal?

A. That is what the records show, yes.

Q. How much of a shortage?

A. 5544 pounds.

Q. Well now, you don't claim, do you, Mr. Smith, as vice president of this company that somebody stole 5000 pounds of offal?

* * *

(Tr. 336) Q. Now, I will show you a product analysis sheet dated October 22, 1949, taken from Plaintiff's Exhibit 2, and refer you particularly to a heading on the left hand side known as "sausage raw meat". Is that a familiar name to you?

A. Yes.

Q. And we will follow across here and we find that in the shrink or gain column over on the right hand side there was missing 1811 pounds of that raw sausage meat, is that correct?

(Tr. 337) A. It shows a shrink of 1811 pounds, yes.

Q. That means it was missing, it was not there; is that right?

A. It shows a shrink of 1800 pounds, yes.

Q. But to get down to plain words, it means that – we folks that don't understand about this accounting – means it was 1811 pounds that was not accounted for, it was missing?

A. Yes, it shows that.

Q. Is that what it means?

A. It shows a shortage there, yes.

Q. Now, you are not going to tell this jury, are you, that anybody out at that plant, one of the employees, stole 1811 pounds of raw sausage meat that week?

A. No, I wouldn't think that they would, but for the same reasons as we have gone over before, you can't pick out a certain week and say that the shortage occurred in that week. But when you take an accumulation of weeks, you come to—

Q. But that week does show there was 1811 pounds of raw sausage meat short, missing; is that right?

A. That is what it shows that week.

Q. And it is circled?

A. Yes.

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Abe Solomon Cross-Examination

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(Tr. 360) Q. All right. Eliminate the word "again", so your reduction, which represents the amount of meat during the period of the claim, pork products which were given to the employees of the Sucher Packing Company without charge, represents an estimate?

A. The figures used in the claim reduction represents an estimate, yes.

• • •

(Tr. 363) Q. And can you tell me, when William Harris began to work for the Sucher Packing Company?

A. In accordance with the employment record, which we had and which we were able to find, he began work on July 20th — some day in July, 1950.

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Q. I hand you what has been marked as Defendant's Exhibit M for identification and ask you to examine that, please, and tell me what it is.

A. This was an employee record card prepared on William Harris when he came to work on July 28, 1950, for the purpose of putting him on the payroll, setting the rate by which he would subsequently be paid. It also shows (Tr. 364) the date he left and the reason that he left.

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(Tr. 370) Q. So, is it not a fact, Mr. Solomon, as Treasurer of the company, that the figures appearing on Plaintiff's Exhibit 6 for identification is the total adding machine tapes appearing on Mr. Hadler's work sheets?

A. It is the same figure.

Q. Why, sure. Now, when did you advise Mr. Hadler that there was any kind of a shrink?

A. I imagine that was shortly after September 11th of 1950 that we engaged Arnold, Hawk & Cuthbertson, through Mr. Hawk, to determine whether or not the books and records reflected any shrink.

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(Tr. 379) Q. Now, from the killing room the hogs are taken to the chilling room?

A. That's right.

Q. Anything done to them in the chilling room?

A. Not unless it would store.

Q. Then they remain in the chilling room for a period of time and is that chilling room also known as the cooler room?

A. It is known as the hog cooler.

Q. And on this summary sheet where we have "Note 1", there appears "fresh pork carcass weight is dressed weight after deducting 3% allowance for cooler shrinkage". Is that what appears there?

A. That is right.

Q. And that shrinkage reflected in "Note 1" is the shrinkage that occurs when a hog is hanging there in the cooler, and chill room?

A. No. That is an error.

Q. This is in error?

A. That's right. The claim that 3% is cooler shrinkage, in the sense that it is the shrinkage taken in the hog cooler, is an error.

Q. That was an error?

(Tr. 380) A. That's right.

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(Tr. 383) Q. What shrink, other than cooler shrink, occurs in the cooling room?

A. Well, in the cooling room you would just have what you call "cooler shrink".

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Q. What is the first thing that is done to the hog in the cutting room?

A. The hog is brought into the cutting room, into the center of the room on a rail, the gambrels are removed and the hog is placed on a table.

Q. When we speak of gambrels, can you tell us what that is?

A. Yes. The hog is handled through the plant in the dressed state by placing a wooden stick in the leg or in the hind legs of the hog, between the leg and the cartilaginous tissue, which gives the piece of wood a secure hold on the hog. Then a wheel with two pieces of metal coming down to surround the piece of wood holding the hog with the hind feet up and it can be moved on the rail.

(Tr. 384) Q. And that is on that carcass at the time it reaches a hot dressed weight, that stick?

A. It is actually on the carcass from the time the hog leaves the dehairing machine.

Q. After that is taken off, what occurs to the hog?

A. Well, the hog is placed on a table and split in two.

* * *

(Tr. 386) Q. Now, when the ham is collered, can you tell me what is done with that fat?

(Tr. 387) A. The fat is put into trucks and it eventually ends up in lard, taken to the lard room, weighed, taken to the lard room and put in the lard kettles.

* * *

(Tr. 396) Q. Where does the fat go to?

A. The tank truck is right at the side of the man during the cutting and it passes out of the room when loaded, loaded on a scale and sent to the lard department.

* * *

(Tr. 398) Q. Well, now, in 1950 were there any hogs sold as dressed hogs?

A. Yes.

Q. There were?

A. Yes.

Q. I think the testimony is that those are not included in here; isn't that right?

A. They certainly are included in there.

Q. They are included?

A. Yes.

Q. Then they go in part to make up this 9,000,000 pounds?

(Tr. 399) A. Yes, sir.

* * *

(Tr. 407) Q. We didn't weigh them yet. Let's see where is that weight recorded?

A. Right off the killing floor.

Q. Now, you have this hog hung up and it goes on this runway, I understand, until it reaches the scale?

A. That's right.

Q. And is that scale located under the hog, to the side of the hog, or where?

A. It is a track scale.

Q. A track scale?

A. That's right.

(Tr. 408) Q. Now, can you tell me what a track scale is?

A. A track scale is a portion of track that is separated from the fixed part of the track so it can measure the weight of whatever is on it.

* * *

(Tr. 418) Q. I didn't ask you whether you ruled out. I asked you if it is not a fact that you still had these shortages, September 16th 11,000 pounds, September 25th 3709 pounds, September 30th 6600 pounds, after the date upon which Willie Harris was apprehended?

A. Those figures do not necessarily represent the shortages of those particular weeks.

Q. All right. They are there, aren't they, speaking of these three from Mr. Hadler's work sheet?

A. Yes.

Q. And on this work sheet you notice various weeks from November 5th all the way to September 30th of 1950, do you not?

A. That's right.

Q. I am speaking of November 5, 1949, and after each week you see an alleged shrink or an alleged gain, don't you, by week?

A. That's right.

* * *

(Tr. 421) Q. Now, Mr. Solomon, as treasurer of the company, you have a closing on October 31st of each year, don't you?

A. That's right.

Q. Was there any reason for terminating the first 47 weeks of this period on October 22, 1949 instead of October 31, 1949?

A. Yes. The reason was that we could not find the figures for that particular week, the folder, because it was the end of the year, perhaps had gotten more attention than the rest of the folders and could not be found with the rest of them.

Q. So, without that analysis sheet, you were unable to include, or at least Mr. Hadler was unable to include, any figure for the 48 weeks, so he stopped at 47 weeks; is that right?

A. I assume that is what he did. I say, again, I did not tell him how to do his job.

Q. At least you did not give him the weekly production analysis sheet of 48 weeks?

A. I didn't have it.

Q. So without that, he does not have the 48th week on his schedule?

(Tr. 422) A. Not for the first period.

THE COURT: These three weeks were taken out. Do I understand that they were taken out on a basis of an average over a whole period of time?

THE WITNESS: The average of the 48 weeks in the second year of this claim.

THE COURT: Not taken out, the actual amount that had been put in for those three weeks?

THE WITNESS: No.

Q. Now, do you have the weekly production analysis sheet for the week ending September 16, 1950, which is the first week following Mr. William Harris'—

A. I have been asked to look for it and have not been able to find it.

Q. Now, when did you present this computation to the defendant?

A. This computation?

Q. Yes, sir. Wasn't it sometime in early 1951, to help your memory?

A. It probably was.

• • •

(Tr. 433) Q. And on those tapes appear the figures in the weekly analysis production sheets, don't they?

A. That's right.

Q. For each of 47 weeks?

A. That's right.

Q. But not for the 18th week, or the week ending October 31, 1949, do they?

MR. GOLDMAN: There wasn't a week ending October 31st. I assume you mean 29th.

MR. SELVA: Whatever that last week was is the one we want to see. So far, we have not been able to see it. All right.

Q. It does not, with that correction, include the week ending October 29, 1949, does it?

A. No.

• • •

(Tr. 436) Q. Now, I hand you again, Mr. Solomon, what has been identified as Defendant's Exhibit N for identification, and ask you to compare Defendant's Exhibit N for identification with Plaintiff's Exhibit 6 for identification, and tell me whether or not the carcass weight processed, pounds on Plaintiff's Exhibit 6 for identification opposite No. 1, is the same as the figure under fresh pork carcass weight on the adding machine tape?

A. Yes, it is.

Q. And what is that figure?

A. 9,758,144 pounds.

Q. And does that summary contain the data of October 29, 1949?

A. No, it does not.

* * *

(Tr. 440) Q. Now, Mr. Solomon, I just want no explanation to begin with, please. Can you tell me the number of pounds of meat that was given to the cafeteria by the Sucher Packing Company for its employees during the second period which runs from November 5th to September 9th of — at this time?

(Tr. 441) A. I can't, but only because I couldn't find the record.

Q. Another record you couldn't find; is that it?

A. Yes sir.

* * *

(Tr. 442) Q. And will you glance at this work sheets just to be sure, please, and tell me whether or not any of those work sheets include the fiscal week of October 31st, or the nearest week to that week when the books are closed? Just hurriedly look through them if you will, or take your time, it doesn't make any difference.

A. No, they do not.

Q. None of them do?

A. No.

* * *

(Tr. 444) Q. You mean even on these sheets there are errors?

A. Pencil and erasures — people write things down, an erase it.

Q. That is true. Almost anytime you compile figures and computations, you are likely to make mistakes.

A. In this particular case, it is obvious somebody made a mistake.

(Tr. 448) Q. Now, Mr. Solomon, I hand you what is marked as a production analysis sheet for the week ending January 8, 1949, and I want you to do some figuring for me, please, to determine how you arrived at the excess for that particular week. Now, you start your week with what figure?

A. Which item are you referring to?

Q. Speaking now of fresh pork. I think that is the one in which most of these discussions have been going, total fresh pork.

A. All right.

Q. You have an opening figure of what?

A. 70,898 pounds.

(Tr. 449) Q. Now, during that period, did you buy any fresh pork?

A. Yes, we bought 3351 pounds.

Q. And that gave you a total of what? It would be 74,249, is that right?

A. That's right.

Q. Now, you had a transfer in, did you not, during that period?

A. Yes.

Q. How much did that amount to, please?

A. 172,584.

Q. 172,584, is that right, sir?

A. That's right.

Q. That is the total fresh pork which we started with, which we purchased and which we added as a transfer in, if my figures are correct, of 246,833. Would you say that is correct?

A. Yes.

Q. Now, what was done with that? Some of it was sold; is that right?

A. Right.

Q. How much was sold from that sheet?

A. 52,363.

Q. And that would leave us with 194,407; is that right?

(Tr. 450) A. Right.

Q. Now, do you have any transfers-out to other departments?

A. On this sheet, there is 115,314.

Q. Now that gives us a balance of what on your sheet?

A. Well, write it down.

Q. What is the balance on your sheet now, that you have on hand?

A. The balance is 81,853.

Q. Actually, the balance would be 79,156, wouldn't it? You figure it.

A. All right. That's right. And then subtract that from 81,553 and we have a gain of 2694.

• • •

(Tr. 475) Q. All right. While you would charge it out, transfer it out at 8 to 10 pounds, when you take the inventory then it weighs 7 and ½ pounds average, doesn't it?

A. That's right.

Q. Now take the 10 to 12 pound skinned bacon. You have 318 with a weight of 302 pounds, and that averages less than 10 pounds a slab, doesn't it?

A. That's right.

Q. Although it is entered in as 10 to 12 pounds; is that right?

A. The belly maintains the same identification it had originally.

Q. It is charged out at 10 to 12 and ends up as a 10-pound bacon, doesn't it?

(Tr. 476) A. Slightly less.

Q. Slightly less than 10 pounds. That is the lowest weight. Now, the third category is 14 to 16 pounds group, is it not?

A. That's right.

Q. And you had 179 skinned bacons there with a weight of 2306 pounds; is that not right, sir, on that sheet?

A. That is right.

Q. And that averages a little over 12 pounds to a slab, doesn't it?

A. Yes, sir.

Q. And then in the last category, you have 16 to 18 pound average skinned bacons, 111 weighing 1707 pounds, and that averages out to a little over 15 pounds to a bacon, doesn't it?

A. Yes, sir.

Q. Although it was entered in as a 16 to 18 pound bacon, was it not?

A. It carries the title of 16 to 18 pound belly, yes.

• • •

(Tr. 481) Q. Now, Mr. Vass apparently again took an inventory of the skinned bacon, did he not?

A. That's right.

Q. And in that inventory he has 8 to 10 pound averages, 10 to 12, 14 to 16 and 16 to 18, does he not?

A. That's right.

Q. And in the first category, the slab of bacon would end with an average of 8 pounds; didn't it?

A. That's right.

Q. And in the second category, ended with an average of 11 pounds exactly, between 10 and 12, wouldn't it?

A. It is 11 pounds; yes.

Q. And in the third category, 14 to 16 pounds would end at 14 pounds even, would it not?

A. Looks like it; yes, sir.

(Tr. 482) Q. And in the 16 to 18 pound category would end at 16 pounds even, would it not?

A. That's right.

* * *

(Tr. 491) Q. Did you ever receive a report prior to the 11th day of September, 1950 of anyone being apprehended removing particles of meat, in whole or in part, from the Sucher Packing Company?

A. I don't recall any specific instance at this time.

Q. And you, of course, went through the plant frequently after you were there, didn't you?

A. Yes, sir.

Q. And did you at any time, see anyone removing any meat from any department which they were not supposed to handle?

A. No.

* * *

(Tr. 499) Q. So they took the shrink pounds and they deducted the gain pounds and that is the figure that they submitted, is it not?

A. I think so. I take your word for it. I don't know.

Q. Now, the first week following September 11th you show a shrink of 11,096 pounds. That is September 16th.

A. Yes, sir.

Q. And the next week, September 25th, following September 11th, you show a shrink of 3707 pounds, don't you?

A. That's right.

Q. And on September 30th following September 11th you show a shrink of 6666.

A. That's right.

Q. And I would like to ask you, Mr. Solomon, if you still prepare weekly production analysis sheets?

A. Yes, sir.

Abe Solomon – Cross

Q Can you tell me in those analysis sheets, let's say of October, 1950, did you continue to maintain a column for shrink loss and shrink gain?

(Tr. 500) A. Well, I don't think we have changed our methods.

Q And even today, you still maintain a column shrink loss and shrink gain, don't you?

A That's right.

MR. SELVA: I think that is all. Thank-you.

Abe Solomon Redirect

* * *

(Tr. 502) Q I hand you what has been marked as Plaintiff's Exhibit No. 7, and ask you if that is a time card of William Harris for the particular dates that show as a day laborer?

MR. SELVA: If the Court please, we object.

THE COURT: What is the objection?

MR. SELVA: We have made demand upon the plaintiff for the records and have been given certain records, we object if they have withheld anything until this time.

MR. GOLDMAN: Where is your demand that requested that record?

MR. SELVA: Right here in your presence.

MR. GOLDMAN: That wasn't a formal demand.

MR. SELVA: If the Court please, I did not demand each record specifically. I don't know what records these people have or may, and I demand the records of this employee.

THE COURT: Let's see that.

(The witness handed Exhibit 7 to the Court.)

(Tr. 503) MR. GOLDMAN: I may say, your Honor, that that record was found over the weekend, after diligent

search, and Mr. Selva had never requested, as I recall about any formal processes. He made an oral request to me in an informal meeting that we had.

THE COURT: You submitted to him the other employment card at his request.

MR. GOLDMAN: That is what we found at the time. That is where he got it.

THE COURT: Then his request would have been broad enough to have included—

MR. GOLDMAN: Had we known that this existed we would have given it to him. Because of Harris' testimony that he had worked earlier than this other card, we tried to find if there were any records of his employment. Most of them had been thrown out, but this one was located.

* * *

Abe Solomon Re-Cross

* * *

(Tr. 533) Q. Commencing on page 87, speaking of William Harris, I asked you this question: "Will you get his employment record for us at this time, please?" Whereupon Mr. Solomon left the room and thereafter returned bringing with him two cards." Mr. Goldman was present at that interrogation, was he not?

A. I think so, yes, he no doubt was.

Q. "This is the entire record of the employer named on the record?" Answer: "As far as I know." Were those questions asked of you and those answers given?

A. Yes.

* * *

(Tr. 536) Q. "When did William Harris commence working for the Sucher Packing Company?" Answer: "July 26, 1950." Question: "And in what capacity was he em-

ployed? Answer: As a laborer. Were those questions asked you and those answers given?

A. Yes.

Q. Now, you know this action was filed in 1952, don't you?

A. I believe so.

Q. And in 1953 you say you threw away many of the records for employees whom you accused of having committed acts prejudicial to your company?

A. Oh, we threw away the time cards and threw away cancelled checks for the period.

* * *

(Tr. 537) Q. Will you tell me what amount you accuse Helen Hurt of stealing?

A. I can't break down the amount in the loss attributable to any one individual.

Q. Will you tell me what amount you accuse Robert Maiden of stealing?

A. I can repeat the same answer.

Q. You don't know, do you?

A. No, not what an individual took.

Q. Will you tell me what amount you accuse William Early of stealing?

A. I don't know.

Q. You don't know, do you?

A. I don't know.

Q. Will you tell me what amount you accuse William Harris of stealing?

A. I don't know.

Q. Have I listed all five of them?

A. I think so.

Q. Will you tell me what amount you accuse Mr. Jackson of stealing?

A. I don't know.

(Tr. 538) Q. Will you tell me what amount you accuse these employees working together, or in collusion with each other, these five employees, of stealing?

A. We know the total that was stolen.

Q. That is not my question. If you will, please, confine yourself to that question.

MR. SELVA: Read it to the witness, please.

(Thereupon the last Q. was read by the reporter.)

A. In collusion with each other only?

Q. Yes.

A. I can't answer that.

Q. Will you tell me what amount, please, you accuse unidentified employees of stealing?

A. Not by themselves, I can't answer that.

Q. As a matter of fact, this entire loss set forth in your proof of loss and in the petition or complaint filed in this case by Mr. Goldman, an officer of the company, represents an inventory loss, doesn't it?

A. Due to theft.

Q. I asked you if it represents an inventory loss?

A. It represents an inventory loss due to theft.

Q. Can you tell me what part of this loss was taken in 1948?

(Tr. 539) A. I cannot.

Q. Can you tell me what part of this alleged loss was taken in 1949?

A. I cannot.

* * *

(Tr. 550) Q. Mr. Solomon, referring again to this inventory shortage of December 24, 1949 in the sum of 10,609 pounds, was that stolen?

A. We don't claim 10,609 pounds was stolen that week.

Q. Was it stolen?

A. The overall shortage in the year, in the two-year period of the claim, we claim was tolen.

Q. You mean just the lump—

A. Not 10,609 shortage the week December 24th. Could very easily be attributed – it was the day before Christmas. Somebody taking the inventory on that day would be anxious to get home. It would be corrected the following (Tr. 551) week.

Q. On that particular day, 10,609 is the result of the error on the part of the party taking it, would be because they wanted to get home?

A. Part of it would be. We couldn't judge on that itself.

Q. The week immediately following that, you say that would sort of have shown up by that week. You have a gain then of 1572 pounds?

A. That's right.

Q. Do you know anyone who brought any meat in–in that amount, in that week, to the Sucher Packing Company?

* * *

(Tr. 552) Q. Now, Mr. Solomon, did you prepare this proof of loss wwhich you signed?

A. Yes, sir.

Q. You used the language contained in that proof of loss is that right?

A. I signed it. I had to prepare it. I am no lawyer to make up—

Q. That is what I asked you, whether or not you prepared it. I want to give you the opportunity to correct yourself.

A. I stand corrected.

Q. Who did prepare it?

A. I imagine the company counsel, at that time, Jerome Goldman.

Q. That is the gentleman seated over there?

A. I don't know for certain, that is the way it was done It probably was done that way by Mr. Goldman. I don't know for certain.

Q. You did, however, read it, did you not?

A. Oh, yes, certainly, I read it.

Q. Of course, you considered it carefully before you signed it, to be sure it was correct, didn't you?

A. That's right.

Q. Let me read this to you: "That all of said employees above named whose identity is known, except Willie (Tr. 553) Early, have been continuously in the employ of said assured for a period beginning prior to November 1, 1947 and continuing to September 11, 1950." Was that statement correct in connection with William Harris, was he continuously in the employ of the Sucher Packing Company, day by day, for that period of time?

A. I can't say now that it is correct, no. At that time I felt it was correct.

Q. But you, at that time, also had in your possession his employment card, did you not?

A. Well, certainly. It is part of the record of the company.

Q. And in this proof of loss you also referred to beef, which has now been dropped and also to the last three weeks of September, which also have been cancelled out.

A. Yes.

• • •

(Tr. 555) Q. And the computation which has been marked as "Plaintiff's Exhibit 6 for identification", shows that all of (Tr. 556) the figures in the right hand column which are contained in the proof of loss are characterized as "unexplained loss", isn't that right?

A. That is the title that is given to it by the accountants

Q. That is the title that was on it when you sent it to the Manufacturers Casualty Insurance Company?

A. That's right.

Q. And that is the title that was on it when you got it from Arnold, Hawk & Cuthbertson?

A. That's right.

Q. And that is the title that you have seen on it all during these years, isn't that right?

A. That's right.

• • •

(Tr. 560) Q. Will you take this week ending January 15, 1949 and tell me how many pounds would be over from those figures?

A. I couldn't tell you.

Q. How many pounds would be under from those figures?

A. I couldn't tell you.

Q. Whatever they were up or down they would be taken from the inventory of fresh pork transferred out; wouldn't they?

A. Yes. The net deviation would go to fresh pork transferred out.

Q. And the net deviation would be an error, wouldn't it?

A. Small error.

Q. Well, whether small or large, it is an error?

A. Yes.

• • •

(Tr. 561) Q. Mr. Solomon, I want to call your attention, and it may be that I have overlooked it, to lard. Is there any item here on this analysis sheet for lard?

A. Well, lard is not included in the claim. That is not considered fresh pork.

Q. I know. But it comes out of that 9,000,000 pounds of fresh pork?

A. Yes. The pounds in these lard tanks, and I don't know whether they are included in these work sheets.

(Tr. 562) A. I don't know. I will see if I can find it. Here it is: 41,481 pounds of fresh pork transferred to lard.

Q. Where did you get that 41,000-pounds figure?

A. Here (indicating).

Q. I know it is there, but where does it come from?

A. It would come from a total of the weights going into lard, which weights are not with these papers.

* * *

Robert Hadeler Direct Examination

(Tr. 579) Q. Mr. Hadeler, you have stated in making the computation that you took the gains and shrinks as shown on the product analysis sheets, subtracted the gains from the shrink and get the net figure as the total?

A. Yes, sir.

* * *

Robert Hadeler Cross-Examination

* * *

(Tr. 583) Q. I will get to that. Just a minute. That is all we have heard in the past week. So that, that shrinkage of 4800 pounds that week, could come either from errors in transfer, taking the inventory, mistakes in other words, or it could come from additional shrink because the merchandise stayed in the storage too long, some spoiled, or it could come from theft. Those are the three sources that lead to that shrink item, aren't they?

A. That is reasonable.

Q. Well, is it correct?

A. That is correct.

* * *

(Tr. 588) Q. That's right. All right. Now, the first figure that I see on Plaintiff's Exhibit 6, this white sheet here, that we are all looking at, is 9,758,000 plus, carcass weight of fresh pork; is that right?

(Tr. 589) A. Yes, sir.

Q. Now, that means that the 3 percent cooler shrink has been removed, and this is the net weight after it has gone through the cooler?

A. Yes, sir.

* * *

Q. All right. So we are charged with 9,758,000 (Tr. 590) pounds plus. Now that figure of 9,758,000 pounds is a total that you computed from these weekly price sheets, similar to the ones you just had in your hands, is that right?

A. Yes, sir.

* * *

(Tr. 592) Q. All right. The week ending July 2, 1949 shows what you term an unexplained gain; is that correct?

A. Yes, sir.

Q. And that unexplained gain is just like the unexplained loss. It might come from any one of two sources, either error or less shrink than computed; is that correct?

A. Basically correct.

* * *

(Tr. 593) Q. Well now, this particular week that we are just discussing where the overage was some 6000 pounds, you found no indication on any books or records of the Sucher Packing Company that anybody had brought back 6000 pounds of meat, did you?

A. No, sir.

Q. So that, that unexplained gain for that period was all within the plant and its records, nothing from the outside that contributed to it?

A. So far as I know.

* * *

(Tr. 595) Q. Now, in a sentence, Mr. Hadeler, you took all the unexplained shortages for all the weeks of the first period, you totalled them. Right?

A. Yes, sir.

Q. And you took all the unexplained gains for the first period and you totalled those?

A. Yes, sir.

Q. Then you deducted from the total unexplained shortages the total unexplained gain and came up with the figure as shown on this report of 199,100 pounds?

A. Yes, sir.

Q. Is that right? So that you put the whole period all on two adding machine tapes, didn't you?

A. Yes, sir.

* * *

(Tr. 596) Q. Why, sure. So there was a shortage in the inventory, so far as their records. I am not blaming it on you. So far as their records are concerned, their inventory figures, ones they took, they did not agree with the operation figures for that week.

A. There was an unexplained loss that we could not account for on the record.

Q. And that unexplained loss was in the inventory. The inventory was that much less than the operating figures showed it should have been: isn't that right?

A. That is how it was arrived at.

* * *

(Tr. 598) Q. I don't know why, but it was 4000 pounds short, and you charged that shortage on the unexplained loss records; don't you?

A. Yes, sir.

Q. And that inventory that had that 4000 pounds short, which you added to your unexplained shortages, was used as a beginning inventory for the following week?

A. Yes, sir.

Q. And that occurred throughout both periods, didn't it?

A. Yes, sir.

(Tr. 599) Q. But just the same, you took all the shortages, added them together, took all the overages, added them together, deducted the one from the other and computed the entire period on two adding machine tapes, didn't you?

A. Yes, sir.

* * *

(Tr. 601) Q. But in preparing Plaintiff's Exhibit 6, at that time, you did not make any exact audit of those transactions?

A. That is correct.

Q. That is correct. Now, what you did at other times is very interesting, but we are most intimately concerned with these sheets that are before us now.

A. No, I didn't make an exact audit of all those sheets.

* * *

(Tr. 606) Q. Now, the question that was asked, "Have you ever determined what that shrink was from your audits?" and your answer was "No". Is that answer still correct?

A. Yes, sir.

* * *

(Tr. 611) Q. Well, I will ask you if you didn't tell Mr. Selva a year ago, when he asked you if there was any excess shrinkage before 1948, your answer was: "They were never concerned with it."?

A. Well, at least, they never asked me to make any special investigations.

* * *

(Tr. 616) A. The loss is unexplained as far as I am concerned. It might have been caused by theft if the shrinkage factors used are wrong, the figures would be wrong.

Q. Or mistakes?

A. Sir?

Q. Or mistakes?

A. Mistakes.

Q. In their bookkeeping, in their records??

A. Oh, if errors have been made.

Q. Yes, sir. When you prepared your report off of that work sheet, you would be able to give us the figures for the last three weeks in September. Would you look at your Exhibits 14-A and 14-B and see if you have them?

A. Last three weeks in September?

Q. Yes, sir.

A. They are on this sheet, yes.

Q. Will you call them off so we will have them in the record?

A. What figures do you want?

Q. What figures do you have? Do you have fresh pork?

A. Fresh pork shrinkage?

Q. What is the fresh pork shrinkage September (Tr. 617) 17th, September 23rd and September 30th?

A. I guess I have the wrong year.

Q. That is 1950.

A. The dates I show are September 16th, September 25th and September 30th.

Q. All right. What are those? That is 1950?

A. 1950.

Q. All right. Give us the fresh pork shrinkage or gain for each of those three weeks.

* * *

(Tr. 619) Q. Now, all these shortages and all these gains for that three-week period occurred after the colored boy was caught stealing some hams; didn't they?

(Tr. 620) A. I assume that is correct. I have no actual knowledge when he was apprehended.

* * *

(Tr. 621) Q. We haven't either. Now, you are still doing the auditing out there, aren't you?

A. Yes, sir.

Q. And they are still keeping the gain and loss figures, aren't they, just like they did throughout these two periods?

A. Yes, they are doing that currently.

* * *

(Tr. 622) Q. Did you ever see anything on their journal or ledger or daybook, where they made any report or any figures or any statement as to any thefts?

MR. GOLDMAN: I object, your Honor. It would be self-serving. We could not produce such record to prove there were thefts. It is immaterial.

THE COURT: Concerning this period?

MR. PICKREL: Yes.

Q. Did you ever find one?

A. No, sir.

* * *

(Tr. 625) Q. So you would not give your unqualified certificate on any inventories in any of the weekly sheets contained in those two periods?

MR. GOLDMAN. I object, as immaterial. The facts are the facts, whatever they may be.

THE COURT: You may answer the question.

A. No, I wouldn't give an unqualified, because I didn't check them, of course.

* * *

(Tr. 629) Q. I am now referring you to Plaintiff's Exhibit 14-A. If you will check that, please, and tell us if there was any one week in the 47 weeks that made up that first period, that did not have a shortage or a gain?

A. No. Every week is either a shortage or a gain.

* * *

(Tr. 637) Q. Did you comment to the officers of the Sucher Packing Company on the fact that every week there was a shortage or a gain, and why, or question as to why?

A. I did not, with respect to every week, no.

* * *

(Tr. 642) Q. Now, this is true, isn't it, that if those 1400-pound vats had a few pounds more or a few pounds less, that affects not only what goes into cure, but all of – also affects the figure on what is left in fresh pork? Isn't that right?

A. That is correct.

Q. And when it affects the fresh pork that goes into cure, then it also affects the final figure for the end of the week, whether there is a shortage or a gain?

A. Correct.

* * *

(Tr. 643) Q. So that anything that affects the correctness of calculations that have to do with shortages of meat, affect the figures as reflected in your final report, don't they?

A. Yes, sir.

* * *

Mr. Hadeler Redirect

* * *

(Tr. 647) MR. SELVA: I would like to call your attention to something else about this exhibit. I just found out you have added in all the beef and veal figures. Are you going to take them out, or leave them in?

* * *

MR. GOLDMAN: The grand total figures are wrong. I think the exhibits should be redrawn.

Arthur Beerman Direct

* * *

(Tr. 653) Q. Did you make any physical changes at the plant with respect to openings, doors, and things of that sort?

A. We put guards on the outside, a guard building. We repaired all our fences. We closed the front yard and permitted customers and employees to come and go through a guarded passage and to the best of my knowledge, everything was checked in and out.

* * *

Francis E. Merica Direct Examination

* * *

(Tr. 666) Q. What is your occupation, Mr. Merica?

A. Private investigator.

Q. What is your experience in the field of detective investigating work?

A. I started in the work 32 years ago.

* * *

(Tr. 667) Q. About when were you employed?

A. It was in the fall of 1949.

Q. What did you do on that occasion?

A. Well, we assigned men out at the Sucher Packing Company at night to watch the fence and see who was coming in and out and whether they were carrying any packages, and such as that, but we didn't find anything.

* * *

(Tr. 669) Q. After interviewing Harris, did you interview any other employees?

A. Yes, I interviewed Jackson, Maiden, Hurt.

Q. Do you recall an employee named Early?

A. That's right, at that time. I later interviewed all the employees in the entire plant.

* * *

(Tr. 671) THE COURT: I mean, did you find physically in any way, a matter of investigation, talking to someone?

THE WITNESS: I found just one piece in talking to someone.

THE COURT: You mean found one piece of meat?

THE WITNESS: Yes, sir.

* * *

Ray McConkey Direct Examination

* * *

(Tr. 677) Q. When the ham is trimmed, what is done with the trimmings from the ham?

A. The fat trimmings are throwed in a truck and are removed to the rendering, the lard rendering.

* * *

Ray McConkey Cross-Examination

* * *

(Tr. 694) Q. Do you recall this question being asked of you and this answer given by Mr. Green? "Then I take it that prior to September 11th you had no reason to believe that any quantities of meat were being taken from the plant? A. I had no knowledge of any." Do you recall that question asked of you and that answer given by you on September 26, 1950?

A. I did have no knowledge of any being taken.

Q. You had no personal knowledge, did you?

A. No, of any being taken, no.

Q. And you were over the entire plant?

A. Yes, sir.

* * *

Q. At no time did you see any employee carrying out any unauthorized meat package or meat?

A. Not actually did I see them.

* * *

(Tr. 701) Q. You didn't see that. Mr. McConkey, can you tell me whether or not, to your knowledge, any actual record was ever made as a result of any actual test on shrink at the Sucher Packing Company during the time you were there?

(Tr. 702) A. I don't remember of any.

* * *

(Tr. 710) Q. Yes, sir. But when they do touch, those (Tr. 711) parts of the various hogs that touch, don't get adequate chilling?

A. Well, I mean, it depends. Just the matter of fact they are touching doesn't mean they wouldn't be. The refrigerator, or temperature wouldn't come down if they were pushed together. That would be suicide as far as handling meat is concerned.

Q. Why would it be suicide?

A. You would have spoilage. You couldn't do that.

* * *

(Tr. 712) Q. And at least when this picture was taken, that is the way they were packed, were they not?

A. Yes.

Q. And were they ever packed that way in the period 1949 to 1950, to your knowledge?

A. It is possible.

* * *

(Tr. 717) Q. Have you ever observed any trees of hams with hams missing, unaccounted for, yourself?

A. Well, that would be hard to answer to that extent. I have, of course, seen trees where they would be vacant spaces, but what happened to them, I couldn't say.

Q. That vacant space, of course, might arise by the failure to put a ham on that hook?

A. That could be, or it could be something else.

* * *

(Tr. 724) Q. Can you tell me whether or not you are acquainted with the amount of meat that was allocated to the cafeteria during 1949 or 1950?

A. I am not acquainted. I have no records of that.

Q. You don't know what, if any, was allocated?

A. I know there was some.

Q. Allocated?

A. I think there was. I know they did have a lunch for the men.

* * *

(Tr. 729) Q. Do you have any way of telling me what the volume of bone, or other parts of the pork that was removed in preparation for hotel and restaurant cuts, amounted to?

A. No, sir.

* * *

(Tr. 730) Q. Is Sucher Packing Company completely refrigerated throughout?

A. Completely?

Q. Yes, sir.

A. We have rooms that are not refrigerated.

Q. And some that are?

A. Yes.

* * *

(Tr. 731) Q. Can you tell me whether or not you agree with this statement taken from the "National Provisioner": "In the study of the difference of the shrink between the plants using completely refrigerated facilities for cooling, storing and wrapping, and shipping smoked meats, and those not using complete refrigeration, was noted to be from one-half to one and one-half percent." Would you agree with that statement, Mr. McConkey?

A. If I understand the question correctly, where there were wrapping rooms and chill rooms, the shrinkage would be one to one and one-half percent?

Q. No, sir. ½ to 1 and ½ percent.

A. I would say that would be a fair average in between those figures.

Q. Do you agree with this statement: "Assuming the average price of 50 cents for smoked meats and an average tonnage of 70,000 pounds a week, a packer, without (Tr. 732) complete refrigeration, might be losing from $175 to $525 per week."?

A. He evidently figured it.

Q. I mean, would you agree or disagree with that statement?

A. It sounds reasonable.

* * * *

(Tr. 733) Q. As a matter of fact, the shrink depends upon many factors, doesn't it?

A. It does.

Q. And isn't it one of the bugaboos of the meat industry?

A. It is.

* * * *

(Tr. 735) Q. Can you tell me whether or not during the time that you have been at the Sucher Packing Company, and I mean now in 1949 and 1950, you have had any breaks in the refrigerating system?

A. Breaks in the refrigerating system? It is quite possible.

* * * *

(Tr. 739) Q. Mr. McConkey, do you know of any investigation which was attempted at the Sucher plant during 1949 and 1950, while you were there, except the one which arose as a result of your apprehending William Harris?

A. I don't remember of any investigation.

* * * *

(Tr. 741) Q. So at that time, actually, the Sucher Packing Company was just beginning to inaugurate a count system to try to get accuracy?

A. A count, but not weight.

Q. And an inventory count to try to get accuracy, weren't they?

A. That could be correct.

* * *

Ray McConkey Redirect Examination

* * *

(Tr. 742) Q. Prior to the time they made a record of the actual number of pieces, was there a record of the weight inventory?

A. The record of the weight was used.

* * *

Ray McConkey Recross Examination

* * *

(Tr. 743) Q. You were inaugurating a count system to attain accuracy, weren't you?

A. We were.

* * *

Burton Davis Cross Examination

* * *

(Tr. 752) Q. Have you ever made an inspection of the Sucher Packing Company before this morning?

A. Our company has.

Q. Have you, I said.

A. No.

Q. So, you were sent over here at the request of Mr. Beerman to testify in this case?

A. That's correct.

* * *

(Tr. 759) Q. Now, in order to determine the chilled cooler weight, you would take the weight of the animal before it goes into the cooler room, wouldn't you?

A. Correct.

Q. And you would then take the weight of the animal when it comes out of the cooler room, wouldn't you?

A. That's right.

Q. And that is what you would refer to as cooler shrink, isn't it?

A. Cooler shrink only.

Q. Now, I hand you what has been marked as Plaintiff's Exhibit 6, and ask you to read the first line under "Notes No. 1".

A. (reads) "Fresh pork carcass weight is dressed weight after deducting 3 percent of the amount for cooler shrink".

* * *

(Tr. 762) Q. And on those product analysis or sales analysis sheets, you observed a figure representing percentage of shrink?

A. I did not. I only saw the overall tonnage figures.

Q. Let me ask you again. Maybe you misunderstood my question. Did you, at any time, when you went to the Sucher Packing Company this morning, see any shrink percentage records?

A. No.

* * *

(Tr. 764) Q. In going to these other plants, do you see any record of their shrinks?

A. Yes.

* * *

(Tr. 766) Q. Did you ask to see any records of cooler humidity or temperature?

A. No.

Q. That would not affect—

A. I asked about records and they said for a certain period of time they were destroyed because they became bulky.

Q. The records of humidity and temperature for the period 1948, 1949 and 1950, they said, were destroyed?

A. Well, they had gotten away, anyway.

* * *

(Tr. 768) Q. Let me ask you this: Again referring to pork – if I happen to mention beef, there is no more beef and no more veal in this case. In your experience, can you tell me, Mr. Davis, whether or not if a hog remains in a cooler for three days instead of one day, the shrink would increase or decrease?

A. It would increase.

* * *

(Tr. 769) Q. Now, let me ask you another thing. Did you ask the Sucher Packing Company where the source of these hogs was, where they bought them?

A. No.

(Tr. 770) Q. Do you consider the source of the purchase of the hog to be any factor whatsoever in shrink?

A. Yes.

Q. But you didn't ask about that record, did you?

A. I presumed they are mid-western hogs and corn fed.

Q. Mr. Davis, did you ask to see the record?

A. No.

Q. Did you ask whether or not they were corn fed hogs, or other fed hogs, at the Sucher Packing Company?

A. No, I didn't.

Q. Do you mean to say to this jury that the shrink of a corn fed hog would be the same as the shrink of a slop fed hog?

A. It would be less.

Q. Did you attempt to determine what kind of hogs you were going to testify about today?

A. No.

* * *

(Tr. 771) Q. As a matter of fact, isn't it true that almost every packer obtains the shrink from the conditions existing in that particular plant?

A. Yes.

Q. And, therefore, the conditions existing in the plant also must be considered as a factor in determining shrink by the management, would it not?

A. That is true.

* * *

(Tr. 774) Q. Then, may I ask you again, whether or not the breed of the animal, whether it be a lean hog or a lard hog, would have any effect upon its shrink?

A. I don't know.

Q. You don't know that?

A. I don't know that exactly.

Q. Do you think it would have an effect upon the yield?

A. Yes.

Q. And wouldn't the lard hog have a greater shrink than the lean meat hog?

A. It would. I mean, to a certain extent, yes.

* * *

(Tr. 778) Q. Did you ask what they held the temperature at in 1948, 1949 and 1950?

A. Yes. I said "What is the normal temperature you hold in this room"?

Q. What was it?

A. Right now at the present time?

Q. Then. You didn't make any inquiry what it might have been back in 1948, 1949 and 1950, did you?

A. No, I didn't.

* * *

(Tr. 787) Q. Would you say that packers who use humidifiers would get – normally get a lower shrink?

A. Yes.

Q. But you didn't ask out there whether or not humidifiers were used? I mean, Sucher Packing Company.

A. No.

Q. That is another factor that would affect shrink, would it not?

A. Yes, humidity does affect shrink.

* * *

(Tr. 798) Q. Did you ask Sucher, or Mr. Smith, the equipment that they were using in 1948, 1949 and 1950?

A. No, I did not.

* * *

(Tr. 799) Q. Let me ask you whether or not these variable factors would, in your opinion, affect shrinkage: 1. Air circulation; 2. Relative humidity in the cooler; 3. The position of vat covering; 4. Manner in which the cooler is used; 5. The frequency with which the door of the cooler is opened and closed during the period of time; and the removal or addition of hot carcasses, would those factors affect weight shrinkage?

A. All of them, yes.

* * *

(Tr. 800) Q. I was referring to pork. Would these factors affect the cooler shrinkage on pork?

A. Yes, they would.

Q. Would these factors affect the cooler shrinkage on processed pork, such as fresh hams, Boston butts, loins, and so forth?

A. Yes.

Q. Would these factors affect the cooler shrinkage on smoked products?

A. Yes.

Q. Would these factors affect the degree of shrink on sausage and sausage products?

A. Yes.

* * *

(Tr. 801) Q. Would the fact that hogs were kept in a cooler over weekends affect the shrink?

A. Yes.

* * *

Burton Davis Re-Cross Examination

* * *

(Tr. 807) Q. Of course, there must be some refrigeration in the cooler room, mustn't there?

A. That's right.

Q. And the degree of refrigeration is a very important factor, isn't it?

A. That's true.

* * *

Rulings of Court

* * *

(Tr. 817) MR. GOLDMAN: Suppose, it is conceivable — I hope this result will never occur — but it is conceivable that the jury might allow us only $291.14. That is a possibility and I think that if the defendant at one time or another has admitted that we found the following items (Tr. 818) and amounts as being lost within the terms of the contract, that is an admission and it is just as if the President of the company wrote it as if the attorney for the company writes it, when he is representing them. I think we are entitled to the benefit of that.

* * *

(Tr. 846) The case is now before the Court on the motion of defense for a directed verdict, and at this time I will overrule that motion. Counsel for defendant may renew it at the proper time and the Court will at that time announce a more complete decision on that question.

Are you ready to proceed?

MR. SELVA: Yes.

* * *

W. H. Bruner Direct Examination

* * *

(Tr. 847) Q. Will you state your name to the jury?

A. W. H. Bruner.

Q. Where do you live?

A. Columbus.

Q. And what is your vocation?

A. I am employed by the Agricultural Extension Service, Ohio State University, as swine specialist.

Q. Is that in the form of animal husbandry?

A. I have a joint appointment, with animal science and agricultural economics, marketing.

Q. How long have you been engaged in swine inspection work?

A. Since 1949.

* * *

(Tr. 849) Q. Can you tell me, over this period of years what the cooler shrink has been in your experience?

A. I think it would be safe for me to say that most of my work has been done with hogs 188 to 230 pounds and a normal shrink might be expected from hot to chill, to be 2½ to 3 percent.

Q. Can you tell me whether or not any additional shrink would arise if the animals are held in the cooler longer than a 24-hour period?

A. For each additional 24-hour period the carcass is in the cooler?

Q. Yes, sir.

(Tr. 850) A. Plus the original 24?

Q. Yes, sir.

A. Half of a percent, I would say, would be a fair, normal figure there.

Q. Would that be for each day?

A. Each 24 hours.

* * *

(Tr. 852) Q. Can you tell me what your experience has been with regard to cutting shrink? What percent, if any, is allocated to cutting shrink as a result of your experience?

A. I suppose that is the hardest question you have asked me, or hardest for me to answer, because you weigh the carcass as one weight. You get these individual pieces or cuts and get nine or ten or eleven different weights for the carcass. You have different people weighing. This cutting

shrink is a hard thing to answer. I would say, based on my own experience, I find a variation of ½ to 1 and ¼ percent.

Q. That cutting shrink in addition to the cooling shrink–

A. That's right.

Q. (continued) –would be anywhere from ½ to 1¼ percent?

A. Yes, sir, based on my experience.

Q. Where has that experience been, again, generally?

A. Processing plants as well as the laboratory experience.

Q. Those are meat packing plants, processing plants?

(Tr. 853) A. Yes, sir.

* * *

Q. And then the size or weight of a hog that is put into the cooler, would affect the question of shrinkage?

A. Yes, very definitely.

Q. And then, would the question of temperature affect shrinkage in the cooler?

A. Temperature and humidity, air velocity, all have a profound effect upon shrinkage.

* * *

W. H. Bruner Cross Examination

* * *

(Tr. 875) Q. Now, in figuring what might be called normal shrinks, Mr. Bruner, you take into account, do you not, the various variables such as variations in humidity and temperature and air circulation? And breed of cattle, if (Tr. 876) that is a factor, the amount of fatness in the cattle and any other variable there is, and come to an average figure, do you not?

A. That's right.

* * *

W. H. Bruner Redirect Examination

* * *

Q. Let me ask you, Mr. Bruner, Mr. Goldman has asked you about various temperatures, humidity, and atmospheric conditions, and weight of animal and number of carcasses. If you had none of that before you and were asked to determine the shrink of an animal passing through a cooler, with no knowledge of what the temperature, whether it be 34, 54, or 104, no knowledge of the weight of that (Tr. 877) carcass, no knowledge of the air humidity, no knowledge of the temperature, no knowledge of any of the conditions going on in that cooler room, would you be able to give an estimate of the cooler shrink on that animal without any of the factors before you?

* * *

MR. GOLDMAN: I object.

THE COURT: I will sustain the objection.

* * *

Robert Bowser Direct Examination

* * *

(Tr. 879) Q. Will you state your name?

A. Robert Bowser.

Q. Where do you live, Mr. Bowser?

A. I live at New Lebanon.

Q. Are you married?

A. Yes, sir.

Q. What is your occupation?

A. Well, I am a butcher by trade and I manage a small packing plant out there.

* * *

(Tr. 880) Q. First, I want you to tell me what cooler shrink is, Mr. Bowser.

A. My own impression of cooler shrink would be the difference in weight between the hot carcass put in the cooler and the chilled carcass when it comes out of the cooler.

Q. And you have a cooler in connection with your small packing plant?

A. Yes, sir.

Q. Can you tell me at what temperature you keep the cooler?

A. We maintain a cooler temperature of 34 degrees.

(Tr. 881) Q. And when you place the animal in there, is that the hot weight?

A. That's right.

Q. And when the animal is taken out – after how many hours?

A. 24 hours.

Q. Is that the cold weight?

A. It is the chilled weight, yes.

Q. Can you tell me what degree or percentage of shrink of the carcass takes place in the cooler?

MR. GOLDMAN: I object. Reference only to his plant wouldn't have any bearing in this case.

THE COURT: Overrule the objection.

MR. SELVA: Will you please read the question to the witness?

(Thereupon the last Q. was read by the reporter.)

A. In the first 24 hours?

Q. Yes, sir. I mean the first 24 hours.

A. We figure 3 percent for shrinkage.

* * *

(Tr. 882) Q. Can you tell me, if in your cooler in your packing plant, there is any additional shrink for any additional time held over 24 hours in the cooler?

* * *

A. We figure the first 3 days it would probably average around 1 percent.

Q. In addition to the shrink of the first 24 hours?

A. In addition to the original 3 percent.

* * *

Q. Can you tell me, please, Mr. Bowser, during that period of the additional three days, at what temperature the cooler is kept.

A. We maintain a 34-degree temperature.

* * *

(Tr. 883) Q. Will you please tell me what is referred to as cutting shrink?

A. Cutting shrink would be the loss that you would have in cutting up a carcass, due to bringing it out of the cooler into a warm room where you would be working, you would have a shrink through dehydration, while it was out, and you would have some shrink due to bone cutting and bone waste you would cut with a saw.

Q. Can you tell me, from your experience in your plant, from any extension work that you have done, what, if any, cutting shrink occurs in the cutting room?

A. 1 to 1¼.

(Tr. 884) Q. Is that precent?

A. 1 to 1¼ percent, yes.

* * *

* * *

(Tr. 889) Q. How did you compute your cutting shrink?

A. You mean from the carcass into primal cuts?

Q. How do you compute your cutting shrinks figure that you gave?

THE COURT: Did he testify on cutting shrink?

MR. GOLDMAN: Yes. He gave a figure.

MR. SELVA: Yes, he did, 1 to 1¼.

Q. How did you figure that?

A. You take your carcass and cut it into primal cuts and weigh each primal cut.

* * *

(Tr. 890) Q. Isn't it a fact, Mr. Bowser, in attempting to arrive at a cutting shrink in that way, there are so many unreliable factors to be considered that the result is also not very reliable?

MR. SELVA: Object.

THE COURT: Overruled.

A. We have not found it to be unreliable in our experience where we have made the tests for our own use. You have the same factors to put up with. You have so much bone you are going to have to saw through and you are going to have a certain percent of dehydration while the meat is out, moisture getting out of the meat. If you cut a ham, there is a certain amount of blood in the ham that will run out. If you weigh up each individual piece after you are finished, you are going to get some results.

* * *

PAGE 915 — LINES 1 THRU 15 — MISSING

Elliott Sachs Direct Examination

* * *

(Tr. 925) Now, on these sheets there is no column entitled "shrinkage" on "allowance for shrinkage". The shrink or gain column represents only figures showing the gain or loss in weight as a result of an arithmetical computation. It does not represent shrinkage from process of cutting shrink or holding shrink, or any other type of shrink.

* * *

(Tr. 934) Q. Now, the errors that you have related arising out of these transfers by round numbers, have what, if any, effect upon those figures in that closing inventory for fresh pork?

A. They make it incorrect.

* * *

Q. Now, tell the jury what you found, from your examination of these weekly sheets, Exhibits 2 and 4, as to the figures at the end of the inventory for one week and the figures for the opening inventory of the following week.

A. Well, the figures representing the closing (Tr. 935) inventory of any week become the opening inventory of the following week. They are just transferred over. Taken right over as the beginning inventory.

* * *

(Tr. 942) Q. Do you have any more?

A. The inventory of dressed hogs for the week of November 26, 1949, reading 166 cold hogs hanging, 32,000 pounds.

Q. No average on that?

A. No, sir.

Q. Just the one figure?

A. Just the figure, 32,000 pounds.

* * *

(Tr. 947) Q. Now, would you explain to the jury, where you say errors have occurred in this multitude of computations and calculations that you have recited?

A. By the taking of average weights to represent the weight of a total group of objects.

* * *

(Tr. 953) Q. Now where, if anywhere, on those weekly sheets we find those figures which in the first period totalled 4½ million, and in the second period totalled 6¼ million, approximately? Where, if any, figures do you find any shrinkage figures for that fresh pork held from Friday to Monday?

A. There is no shrinkage listed anywhere on the product analysis sheet.

* * *

(Tr. 955) Q. Have you seen any inventory comparing the closing of one week with the opening of the next week which shows any differences caused by shipments, spoilage, shrinkage, or anything else?

A. The figures for the closing inventory of any week are the opening inventory figures of the following week.

Q. You didn't hear my question. Have you ever noticed any differences where there was any shipments out?

A. There are no differences in the figures.

Q. How many days have elapsed from the time the closing inventory was taken with all this pork in it, (Tr. 956) until the opening inventory is calculated the following week?

MR. GOLDMAN: Now, I object, unless this witness knows of his personal knowledge when that period starts.

THE COURT: I will overrule the objection.

MR. GOLDMAN: Exception.

A. Two days.

Q. And what happens to that pork during those two-day periods?

A. It stays in the plant.

* * *

(Tr. 963) Q. But on the sheets that support the alleged claim on which this suit is brought, Plaintiff's Exhibit 6, Plaintiff's Exhibits 21 and 22, what, if any, credit do you find for any lard sold, either in pounds or dollars?

A. None.

* * *

(Tr. 964) Q. What, if any, reports have you seen from the Sucher Packing Company for the period covered by this litigation, December, 1948 to September, 1950, pertaining to temperature in rooms, chill rooms, cutting room, smoking room, or humidity in any of those rooms, or air conditioning in any of those rooms?

A. None at all.

* * *

(Tr. 974) Q. No record whatever. When, if at all, did you ever see any inventory prepared by the Sucher Packing Company, at any time during this period, which inventory was based on exact counts and exact weights?

A. I never saw any.

* * *

(Tr. 985) Q. In other words, they changed the end period from September 30th to September 10th; is that right?

A. September 9th.

Q. 9th?

A. That's correct.

Q. So, the last three weeks they give us credit for those instead of charge. Right?

A. Well, by averaging.

Q. Do they give us a credit instead of a charge?

A. There is a credit for it, yes.

Q. But the 1,706,000 that starts out on the old account or exhibit, is still the figure that runs to September 30th; isn't it?

A. That's correct.

* * *

(Tr. 986) Q. I wish you would read to the jury what the original bill, or account, or exhibit, prepared by Mr. Hadeler showed to be the total pounds of pork for which the defendant was charged for the last three weeks.

A. 21,408.

Q. And the dollar value of the same is—

A. $6672.02.

Q. And for that $6672, how much credit on this new arrangement did Mr. Goldman give us?

A. $1749.81.

Q. All right. Any other charges and credits over that three-week period?

A. On smoked pork there is a credit on this sheet.

Q. What is the charge – what is the original charge first, as prepared?

* * *

(Tr. 987) A. 9804 pounds at the dollar value set forth in Mr. Hadeler's schedule, came to $3668.90.

Q. And for that $3668.90, how much credit did Mr. Goldman allow us on his Exhibit No. 22?

A. $1028.19.

* * *

(Tr. 988) Q. Now, let's look at Mr. Goldman's Exhibit 22 which he granted by these generous allowances – withdraw the word "generous" – these allowances, and I think you said that exhibit starts out the same as the original exhibit, Plaintiff's Exhibit 6, in the second period, with 17,069,507 pounds; is that right?

A. That is correct.

Q. So he never deducted all these pounds that you have just told us were in the last three weeks, from the 17 million figure?

A. That's correct.

* * *

(Tr. 992) Q. So that, when you figure it out, the original figure of 17 million is the same on both exhibits, and the totals of all the columns, all the way through, are the same; is that right?

A. Excluding beef and veal from Mr. Hadeler's original schedule.

* * *

Elliott Sachs Cross Examination

* * *

(Tr. 999) Q. What records did you ask for that they did not make available?

A. I asked for the general ledger, general journal, journal vouchers and for audit work papers; also for records covering temperature, humidity, changes of air, circulation, during these periods to which you refer, and other records, too, which were not made available.

* * *

(Tr. 1008) MR. GOLDMAN: I am going to ask the witness about Exhibits 21 and 22, and I wonder if I might, so the jury understands the questions, if I might give them each a copy. They have had them before, Exhibits 21 and 22.

MR. PICKREL: We object to that. That is Exhibit 22 is entirely inaccurate, as we have shown. It has been prepared now for the third time, if the Court please, and it still contains all these original figures that is found in

the original Exhibit 6, which had been prepared back in September, 1951. Now, he changed Exhibit 21. Then he changed it to Exhibit 22. But Exhibit 22 is still faulty, and should not go to the jury unless and until it is corrected.

* * *

(Tr. 1056) MR. GOLDMAN: And those figures show there was a lot of beef in the sausage.

MR. PICKREL: Then you show it.

(Tr. 1057) MR. GOLDMAN: He said he examined beef as well as pork.

MR. PICKREL: You took beef out.

* * *

(Tr. 1067) Q. By all means, explain.

A. I examined these product analysis sheets, (Tr. 1068) as I explained yesterday, and I found round numbers, approximations, approximation of weights. I found approximations in inventory and the weights. As I mentioned yesterday, product transfers-out in round numbers from fresh pork affected the balance remaining, or supposed to be remaining, in fresh pork. If one is wrong, the other is wrong. I said yesterday that the use of round numbers, these 1400 and 1600 round numbers, transfers-out, was incorrect because it was not an exact weight and the result would be that the amount of fresh pork remaining on hand, would be not exact and inaccurate. That was also true of inventory taken on these figures of – that appear on the product analysis sheets. I also stated yesterday, that on this product analysis sheet, there is no allowance whatever for any shrink, any line, any column, on this sheet.

I also pointed out through an exhibit that was introduced here, that at least 4½ million pounds of this original 9¾ million pounds was held in inventory for at least two days in which there should have been an additional shrink, but

none of these are reflected on the product analysis sheets. So, for me as an accountant to take this record and to trace out and see what should have been on hand, was an impossibility.

* * *

(Tr. 1071) Q. Now, you stated, Mr. Sachs, to the best of your knowledge lard is not involved in this claim; is that right?

A. I said specifically, Mr. Goldman, that lard appears nowhere on Exhibits 6, 21 and 22.

* * *

Elliott Sachs Redirect Examination

* * *

(Tr. 1103) Q. You related on cross-examination a number of items for which you inquired at the Sucher Packing Company, for purposes of inspection, such as the general ledger, the journal, the journal vouchers and the work papers that support them; the temperature, humidity and air movement records, the purchasing records concerning purchase of equipment, the depreciation schedule and work paper. When, (Tr. 1104) if at all, did you ever see or get any of them?

A. At no time.

* * *

* * *

(Tr. 1132) MR. PICKREL: I should like to have the record show that we now move the Court to dismiss this case for the reason that there has been no proof of claim presented by the plaintiff at any time involving the amounts or issues now before this Court, and for the further reason that the original proof the claim filed shortly after the same arose, (Tr. 1133) being dated the 3rd day of January, 1951, was followed by a lawsuit filed in this court for the amount set forth in such proof of loss, was filed on the date just mentioned. That thereafter, to-wit, on the 29th day of November, 1954, being more than three years thereafter, the plaintiff filed in this court an amended, or a second amended complaint, setting up an entirely different amount on entirely different valuation. Now, the cause is about to take the turn that we are to try the case of certain theft by certain specific individuals and no proof of claim or loss has been made in accordance therefor, and therefore, this case should be dismissed since the same is not accomplished in the manner required under the contract or policy of insurance.

We should like to offer some sworn testimony to support this motion. I would like to call Mr. Solomon and have him sworn, please.

MR. GOLDMAN: I object to such proceeding. The case has been closed, all parties have rested, your Honor.

* * *

(Tr. 1138) MR. SELVA: May it please the Court, in view of defendant's present position, we respectfully request a realignment of the exhibits and respectfully request an order requiring plaintiff at this time to produce original statements of Helen Hurt, James Maiden, William

Harris, James Jackson and Willie Early, for submission to the jury.

THE COURT: That motion will be overruled. It is correct that only those exhibits which will be pertinent to the issues now before the jury should be submitted to the jury, if you can ascertain this before the case goes to the jury.

* * *

Excerpts from Argument of Mr. Goldman

* * *

(Tr. 1140) And I may say to you also, in consideration of the case, at this point, sausage may be eliminated, as the testimony of Harris, with respect to sausage is too indefinite. So, the case now is restricted and confined to fresh pork and smoked pork.

* * *

We also reduced the claim, because we found we had not in our figure given credits of certain amounts we should have and we gave those credits and reduced the claim on the other items. Now I think the claim is down to the (Tr. 1141) bare bones, in the fresh pork and smoked pork.

* * *

(Tr. 1153) I submit to you, Ladies and Gentlemen, that in this case your problem has been much simplified by his Honor's ruling out all the figures which would have been a very difficult job. It involved a lot more work and even manpower in lugging the exhibits. You have a very simple fact to determine at this time.

* * *

Excerpts from Argument of Mr. Goldman

(Tr. 1154) Now it so happens under the terms of this policy we are limited to only those five employees who have been identified, and I think Early was in the ring only a short period, and all we are entitled to is $20,000 for each of the employees who acted alone or in collusion with others. So that, our maximum recovery cannot exceed $100,000 under the terms of the policy, even though our loss may have been considerably greater. But for the ring, four employees, during the period that they acted, we are entitled to recover at least the $80,000. And I submit, frankly, I don't believe that while Willie Early was a member of the ring there was as much as $20,000 taken. He was a member for too short a period.

* * *

(Tr. 1187) Now, as far as Jackson is concerned, we had him on the stand. I leave it to you whether we should have brought in Maiden, Hurt and Early. Are these people who have been convicted going to take the stand and admit the commission of crime? What chance would we have? Isn't that ridiculous? If they felt they would deny it, they had the same opportunity. they could have called them.

* * *

(Tr. 1188) As far as the claim being reduced, that is the only fair thing to do. When we filed our proof of loss, we thought our loss was that much. We are frank to say we can't prove it. And rather than waste more time, we have eliminated it. That is to the benefit of the defendant. They have no kick coming. We have eliminated the beef and veal. We have eliminated these other items. We have tried to make it fair and reduced it to a minimum.

* * *

Excerpts from Charge of Court

* * *

(Tr. 1199) On cross-examination, William Harris was confronted with a statement he had made to Mr. Merica, the detective at the time of his arrest. It is proper for the purpose of testing his veracity. He admitted that in that statement he had answered a statement to Mr. Merica that Jimmy Jackson got him to stealing hams about three weeks before his arrest. He explained this by saying that he meant he had been hauling three weeks.

You are the judges of the credibility of the witness, and it is up to you to determine how much reliance to place on his testimony.

* * *

(Tr. 1200) Now I have prepared for you a document entitled "Special Verdict". It may seem long and it may seem complicated, but I think if you will take it step by step and attempt to pass upon the questions that are submitted, you will not find it too difficult. This is the means by which you make findings of fact and report those facts to the Court.

You are not limited to what is submitted here. If you find that other facts are important that you wish to make a finding on, considering the issues in the case, you may make additional findings that are not indicated in this document.

* * *

(Tr. 1207) You should not be swayed or influenced by any feeling of sympathy or prejudice. It is your duty to carefully reflect upon all of the evidence before you and make your finding in accordance.

Let your only effort be to arrive at a just and fair verdict between the parties.

Excerpts from Charge of Court

If you consider anything that the Court says in this charge as an expression of opinion on any disputed question of facts, you may disregard it, because you are the sole judges of the facts, the weight of the evidence and the credibility of the witnesses. It is peculiarly in the province of the jury to judge of the credibility of the witnesses. That is to say, the extent to which they should be believed and the importance and weight to be given to their testimony. You may believe all of any witness' testimony, or you may disbelieve all of it; or you may believe it in part and disbelieve it in part.

* * *

Defendant's Exhibit C.

Attach V

SUCHER PACKING COMPANY
FRESH PORK IN INVENTORY
AS SHOWN ON PRODUCT ANALYSIS SHEETS

FIRST PERIOD				SECOND PERIOD	
WEEK ENDED	DRESSED HOGS	FRESH PORK	TOTAL FRESH PORK	WEEK ENDED	TOTAL FRESH PORK
12/4/48	36 Head	54511	42234	11/5/49	103261
12/11/48	-	84550	47151	11/12/49	89221
12/18/48	94 Head	86694	52915	11/19/49	86427
12/25/48	257 Head	47124	30126	11/26/49	224901
1/1/49	-	45451	20447	12/3/49	88530
1/8/49	-	41636	40127	12/10/49	220755
1/15/49	-	38118	41104	12/17/49	190487
1/22/49	94 Head	45035	39113	12/24/49	63721
1/29/49	200 Head	30200	36670	12/31/49	82199
2/5/49	-	42234	32460	1/7/50	179126
2/12/49	273 Head	41123	28707	1/14/50	186195
2/19/49	239 Head	31559	36491	1/21/50	234457
2/26/49	287 Head	42587	57828	1/28/50	178897
3/5/49	213 Head	32163	51561	2/4/50	160337
3/12/49	252 Head	41044	45256	2/11/50	157197
3/19/49	236 Head	43186	51171	2/18/50	157598
3/26/49	334 Head	50434	53803	2/25/50	137867
4/2/49	479 Head	77094	58643	3/5/50	143896
4/9/49	287 Head	43337	56020	3/11/50	171107
4/16/49	263 Head	44267	58268	3/18/50	165655
4/23/49	228 Head	34428	64764	3/25/50	133627
4/30/49	347 Head	56169	39425	4/2/50	144550
5/7/49	486 Head	76307	68405	4/8/50	135003

4/16/49	263 Head	44768	58768	103530	3/18/50	165655
4/23/49	228 Head	34478	64764	99168	3/25/50	133627
4/30/49	340 Head	56169	39425	95594	4/2/50	144550
5/7/49	486 Head	76308	68405	144707	4/8/50	135003
5/14/49	338 Head	51035	35138	86176	4/16/50	138307
5/21/49	367 Head	55417	47850	103267	4/23/50	150861
5/28/49	342 Head	82160	30297	112457	4/30/50	165331
6/4/49	330 Head	53790	47725	101015	5/7/50	207281
6/11/49	390 Head	89090	36847	125937	5/13/50	229685
6/18/49	410 Head	61910	41588	103498	5/20/50	134415
6/25/49	178 Head	29404	40583	70487	5/27/50	153507
7/2/49	235 Head	45138	34076	79214	6/3/50	203938
7/9/49	—	—	57531	57531	6/10/50	169429
7/16/49	293 Head	60066	26781	86487	6/17/50	181389
7/23/49	—	—	74197	74197	6/24/50	130241
7/30/49	225 Head	47664	54510	102174	7/1/50	94750
8/6/49	175 Head	41921	58673	100594	7/9/50	42586
8/13/49	—	—	—	46481	7/16/50	105173
8/20/49	—	—	—	74084	7/23/50	65980
8/27/49	—	—	—	58359	7/29/50	94233
9/3/49	—	—	—	120088	8/5/50	95386
9/10/49	—	—	—	155107	8/12/50	80906
9/17/49	—	—	—	107698	8/19/50	100 25
9/24/49	—	—	—	88881	8/26/50	117710
10/1/49	—	—	—	17242		
10/8/49	—	—	—	135503	9/2/50	102392
10/15/49	—	—	—	173049	9/9/50	103087
10/22/49	—	—	—	117666		
				4518287		6274803

SUCHER PACKING COMPANY.

Lard Sales

Week Ended	Weight	Amount
1948		
December 4	38,293	$ 8,681.90
11	46,846	9,954.26
18	28,095	5,679.90
25	84,814	16,959.07
	198,048	$ 41,275.13
1949		
October 1	71,597	$ 11,147.59
8	57,516	9,274.50
15	52,055	8,827.42
22	39,798	6,875.06
	220,966	$ 36,124.57
1949		
November 5	56,030	$ 7,854.41
12	62,280	8,695.82
19	47,310	6,605.91
26	42,586	6,022.02
	208,206	$ 29,178.16
1950		
August 19	33,110	$ 6,487.57
26	61,338	11,443.22
September 2	44,158	8,181.64
9	70,718	12,831.90
	209,324	$ 38,944.33

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FEDERAL RULES OF CIVIL PROCEDURE

Rule 46. Exceptions Unnecessary

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

* * *

Rule 51. Instructions to Jury: Objection

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

Opening Proceedings

* * *

(9) THE COURT: I will overrule the motion for view of the premises.

MR. GOLDMAN: Exception, please.

THE COURT: Exceptions are not necessary.

* * *

Opening Statement on Behalf of Plaintiff

* * *

(11) The evidence will show that originally the claim was made also to include some beef and veal, but feeling that we were not going to be able to have as good evidence on that subject, we have eliminated that portion of the claim from the lawsuit and the suit is new — the claim is restricted to fresh pork, smoked pork and to a small extent sausage.

* * *

KENNETH SMITH — (Cross)

(128) Q. All right. You tell me. Where is that 3 percent taken off?

A. That 3 percent is taken off the tape that is taken off the scale where each individual hog is reported. They total up all the individual weights of the hogs. They get a total then. 3 percent is taken off and that is the (129) figure which appears here.

Q. Then this figure of the total on the right hand side under the heading "Dressed", that is the figure of the dressed animal, less 3 per cent; is that right?

A. Yes.

Q. Beg your pardon?

A. The dressed weight of the animal, less 3 percent, yes.

Q. That is the figure that is way over here on the right hand column, the total; is that right?

A. Yes, sir.

Q. And that has the 3 percent off?

A. Yes, sir.

Q. All right. How long has that been going on out there, all the time you were there?

A. Yes.

* * *

(133) Q. That is not the question I asked you. That is a very interesting answer, but I asked you if about the time you came there you were told anything about a lot of stealing that was going on?

A. Yes. Yes, I was.

(134) Q. You were told it then?

A. I don't just recall.

Q. December, 1947 or January, 1948?

A. Yes. Things were missing from the plant, yes.

* * *

(136) Q. Wouldn't your yellow sheet show what became of those carcasses that were sold as fresh pork?

A. The yellow sheets would in effect, yes. The yellow sheets show the original amount went into the department and it showed what was transferred to other departments in the plant and what was left was available for (137) sale, either as primal cuts or as dressed carcasses. It does show that.

Q. The purpose of your yellow sheets is to show the distribution of pork, isn't it?

A. That is what it does.

Q. Why wouldn't they show the amount of pork sold as fresh pork in carcass form?

MR. GOLDMAN: I object. The witness says they do.

MR. PICKREL: The yellow sheets do?

MR. GOLDMAN: Yes.

THE WITNESS: You are asking me to take a sales figure on pork and say how much is carcass, how much is